

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of December 7 – December 11, 2009

Benefits denied: evidence suggested injuries caused by assault, not MVC.

Kashyap v. Security National Insurance Co./Monnex Insurance Mgmt. Inc.,
File No. FSCO A08-000498, November 18, 2009, per Arbitrator J. Killoran.

Claimant involved in MVC April 5, 2006. Claimant subsequently victim of assault while at work July 28, 2009. Claimant alleged he suffered pain resulting from MVC and applied for accident benefits September 25, 2006. Arbitrator determined claimant was not entitled to payment of treatment plans, housekeeping and home maintenance (“HKHM”) expenses, or cost of functional abilities examination (“FAE”).

Arbitrator found claimant did not meet tests for entitlement to benefits. Section 14 of the *SABS* requires insurer to pay a medical benefit to a person who sustains an impairment as a result of an accident for reasonable and necessary expenses. Section 22 of the *SABS* requires payment of reasonable and necessary expenses for HKHM incurred as a result of an accident if impairment results in a substantial inability to perform HKHM services normally performed before accident.

Arbitrator found claimant’s injuries and impairments resulted from assault rather than MVC and claimant more likely attended for treatment as a result of assault. Following MVC, claimant took Tylenol/Advil for pain and returned to work after a few days rest. Claimant testified he was unable to find a therapy clinic that would take him as a patient. Following assault, claimant went to walk in clinic, family doctor and physiotherapy and was temporally given lighter duties at work. Evidence supported arbitrator’s finding: medical documents were contemporaneous with assault; disability certificate was signed after assault; first treatment plan was submitted 6 months after MVC but almost immediately after assault; and family doctor attributed injuries to assault and declared on a WSIB form claimant had no prior medical history of pain.

Arbitrator also found treatment plans were not reasonable or necessary and claimant physically able to perform pre-MVC HKHM responsibilities.

Implications:

This decision emphasizes the importance of presenting reliable evidence on the cause of injuries and impairments (“injuries”). Documentation of a person’s injuries and their potential cause(s) is imperative. Where there are multiple incidents resulting in injury, it is important to document which injuries and



impairments relate to which incident, or if a second incident aggravated prior injuries or caused new injuries.

Accessing Arbitration Decisions

If you would like to read the arbitration decisions for yourself, they can be found at <http://www.fSCO.ca/english/insurance/auto/drs/decisions/default.asp>. Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site. If you have questions or comments about this edition of the newsletter, contact Carrie Lynn Simmons at Legate & Associates: csimmons@legate.ca